

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed July 13, 2006. Claims 1-9, 12-23, 26-31 and 34-45 are pending in this application. Applicants respectfully request reconsideration and favorable action in this case in view of the following remarks.

Section 103(a) Rejections

Claims 1-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0061091, listing Amaratunga et al. as inventors ("*Amaratunga*") in view of U.S. Patent No. 6,216,956 issued to Ehlers et al ("*Ehlers*"). Applicants respectfully traverse these rejections for the reasons stated below.

Independent Claim 1 is allowable because *Amaratunga* and *Ehlers*, even when combined, fail to disclose, expressly or inherently "the control engine further operable to modify a variable rate of energy consumption data collection at the facility in response to a predetermined event; and the analysis engine further operable to analyze the predetermined event based on a first subset of the energy consumption data obtained before the predetermined event and a second subset of the energy consumption data obtained after the predetermined event." (Emphasis added). The Office Action points to *Amaratunga* at Paragraphs 0028 and 0048 as allegedly disclosing these features, but this is incorrect. Paragraph 0028 generally describes "meter-generated information" that may be sent to a data processing module 20. Paragraph 0048 generally describes accessing data from the data processing module 20 at a predetermined frequency or when the "system is significantly changed" to perform a new regression to update the "transfer function." The "transfer function" is "a mathematical model that relates the energy consumption to the characteristic operating parameters of the energy-consuming system." See *Amaratunga*, Paragraph 0017. Such an accessing of data to update the transfer function certainly does not disclose modifying a variable rate of data collection in response to a predetermined event. To this end, it can not be contested that accessing data is not modifying a rate of data collection.

Additionally, neither paragraphs 0028 nor paragraph 0048 mentions anything of an "analysis engine further operable to analyze the predetermined event based on a first subset of the energy consumption data obtained before the predetermined event and a second subset

of the energy consumption data obtained after the predetermined event.” Specifically, paragraphs 0028 and 0048 only reference “the latest set of data” and mention nothing of data before or after a predetermined event. For at least these reasons, Independent Claim 1 and its dependents should be allowed. Independent Claim 15, 28, and 38, and 41, and their dependents should be allowed for analogous reasons.

Request for Evidentiary Support

Should any of the asserted rejections be maintained, Applicants respectfully request appropriate evidentiary support. Additionally, if the Examiner is relying upon “common knowledge” or “well known” principles to establish the rejection, Applicants request that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. Furthermore, to the extent that the Examiner maintains any rejection based on an “Official Notice” or other information within the Examiner’s personal knowledge, Applicants respectfully request that the Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. 1.104(d)(2).

No Waiver

All of Applicants’ arguments and amendments are without prejudice or disclaimer. Applicants reserve the right to discuss the distinctions between the applied art and the claims in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicants are sufficient to overcome the anticipation and obviousness rejections.

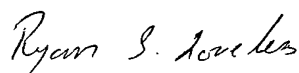
CONCLUSIONS

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants believe no fee is due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants


Ryan S. Loveless
Reg. No. 51,970
(214) 953-6913

Date: 10-13-06

CORRESPONDENCE ADDRESS:

Customer Number: **05073**
Attorney Docket No.: 017575.0490